

§ 366.33

723 of the Act. Under an assistance contract, the DSU shall assume a role consistent with that of the Secretary under section 722 of the Act. If the DSU uses an assistance contract to award funds under section 723 of the Act, the DSU may not add any requirements, terms, or conditions to the assistance contract other than those that would be permitted if the assistance contract were a grant rather than an assistance contract. Under an assistance contract, as defined in this paragraph, the role of the DSU is to ensure that the terms of the assistance contract, which are established by chapter 1 of title VII of the Act and the implementing regulations in this part and 34 CFR part 364, are satisfied.

(f) The Director may not enter into procurement contracts with centers to carry out section 723 of the Act. For purposes of this paragraph, a procurement contract is an instrument whose principal purpose is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the DSU. Under a procurement contract, the DSU prescribes the specific services it intends to procure and the terms and conditions of the procurement.

(g) In the enforcement of any breach of the terms and conditions of an assistance contract, the DSU shall follow the procedures established in §§ 366.40 through 366.45.

(Approved by the Office of Management and Budget under control number 1820-0018)

(Authority: 29 U.S.C. 711(c) and 796f-2(a)(2))

§ 366.33 What are the application requirements for existing eligible agencies?

To be eligible for assistance under this subpart, an eligible agency shall comply with the requirements in § 366.21.

(Approved by the Office of Management and Budget under control number 1820-0018)

(Authority: 29 U.S.C. 796f-2(b))

§ 366.34 What is the order of priorities?

(a) Unless the Director and the chairperson of the SILC, or other individual designated by the SILC to act on behalf of and at the direction of the SILC,

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jointly agree on another order of priorities, the Director shall follow the order of priorities in § 366.22 for allocating funds among centers within a State, to the extent funds are available.

(b) If the order of priorities in § 366.22 is followed and, after meeting the priorities in § 366.22(a) (1) and (2), there are insufficient funds under the State's allotment under section 721(c) and (d) of the Act to fund a new center under § 366.22(a)(3), the Director may—

(1) Use the excess funds in the State to assist existing centers consistent with the State plan; or

(2) Return these funds to the Secretary for reallocation in accordance with section 721(d) of the Act.

(Authority: 29 U.S.C. 711(c) and 796f-2(e))

§ 366.35 What grants must be made to existing eligible agencies?

In accordance with the order of priorities established in § 366.34(a), an eligible agency may receive a grant under this subpart if the eligible agency meets the applicable requirements in §§ 366.2, 366.21, and 366.23.

(Authority: 29 U.S.C. 796f-2(c))

§ 366.36 How is an award made to a new center?

To be eligible for a grant as a new center under this subpart, an eligible agency shall meet the requirements for a new center in §§ 366.2(b) and 366.24, except that the award of a grant to a new center under this section is subject to the order of priorities in § 366.34(a).

(Authority: 29 U.S.C. 796f-2(d))

§ 366.37 What procedures does the Director of the DSU (Director) use in making a grant for a new center?

(a) In selecting from among applicants for a grant for a new center under § 366.24 of this subpart—

(1) The Director and the chairperson of the SILC, or other individual designated by the SILC to act on behalf of and at the direction of the SILC, shall jointly appoint a peer review committee that shall rank applications in accordance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part and any criteria jointly established by

the Director and the chairperson or other designated individual;

(2) The peer review committee shall consider the ability of each applicant to operate a center and shall recommend an applicant to receive a grant under this subpart, based on either the selection criteria in § 366.27 or the following:

(i) Evidence of the need for a center, consistent with the State plan.

(ii) Any past performance of the applicant in providing services comparable to IL services.

(iii) The plan for complying with, or demonstrated success in complying with, the standards and the assurances in section 725 (b) and (c) of the Act and subparts F and G of this part.

(iv) The quality of key personnel of the applicant and the involvement of individuals with significant disabilities by the applicant.

(v) The budget and cost-effectiveness of the applicant.

(vi) The evaluation plan of the applicant.

(vii) The ability of the applicant to carry out the plans identified in paragraphs (a)(2) (iii) and (vi) of this section.

(b) The Director shall award the grant on the basis of the recommendations of the peer review committee if the actions of the committee are consistent with Federal and State law.

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(Authority: 29 U.S.C. 796f-2(d)(2))

§ 366.38 What are the procedures for review of centers?

(a) The Director shall, in accordance with section 723(g)(1) and (h) of the Act, periodically review each center receiving funds under section 723 of the Act to determine whether the center is in compliance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part.

(b) The periodic reviews of centers required by paragraph (a) of this section must include annual on-site compliance reviews of at least 15 percent of the centers assisted under section 723 of the Act in that State in each year.

(c) Each team that conducts an on-site compliance review of a center shall

include at least one person who is not an employee of the designated State agency, who has experience in the operation of centers, and who is jointly selected by the Director and the chairperson of the SILC, or other individual designated by the SILC to act on behalf of and at the direction of the SILC.

(d) A copy of each review under this section shall be provided to the Secretary and the SILC.

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(Authority: 29 U.S.C. 711(c) and 796f-2(g)(1) and (h))

Subpart E—Enforcement and Appeals Procedures

§ 366.39 What procedures does the Secretary use for enforcement?

(a) If the Secretary determines that any center receiving funds under this part is not in compliance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part, the Secretary immediately notifies the center, by certified mail, return receipt requested, or other means that provide proof of receipt, that the center is out of compliance. The Secretary also offers technical assistance to the center to develop a corrective action plan to comply with the standards and assurances.

(b) The Secretary terminates all funds under section 721 of the Act to that center 90 days after the date of the notification required by paragraph (a) of this section unless—

(1) The center submits, within 90 days after receiving the notification required by paragraph (a) of this section, a corrective action plan to achieve compliance that is approved by the Secretary; or

(2) The center requests a hearing pursuant to paragraph (c) or (d) of this section.

(c) If the Secretary does not approve a center's corrective action plan submitted pursuant to paragraph (b)(1) of this section, the center has 30 days from receipt of the Secretary's written notice of disapproval of the center's corrective action plan to request a hearing by submitting a formal written request that gives the reasons why the